

From: Roland Radtke
To: Microsoft ATR
Date: 11/16/01 1:59pm
Subject: Microsoft settlement comments

I do have some comments on the mechanics of the TC committee. These comments are motivated by the idea that any well functioning system should be self-regulating, that is it should have safeguards built in against escalating behaviour.

I must caution that systemically, the carte blanche that the TC members seem to enjoy with respect to spending as per the proposed final judgement is quite a horrible idea.

QUOTE: The TC members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

QUOTE: The TC may hire at the cost and expense of Microsoft, with prior notice to Microsoft and subject to approval by the Plaintiffs, such staff or consultants (all of whom must meet the qualifications of Section IV.B.2) as are reasonably necessary for the TC to carry out its duties and responsibilities under this Final Judgment. The compensation of any person retained by the TC shall be based on reasonable and customary terms commensurate with the individual's experience and responsibilities.

Together, these two stipulations allow the TC - or even just one TC member - to incur as much cost on microsoft's behalf as they choose to. There is no reason that the plaintiffs, who control the cost, but do not incur it themselves have it in their own interest to make sure that the total cost stays within reasonable bounds.

I strongly suggest that as part of the judgement, an annual budget is proposed that cannot be exceeded. This would correct the problem.

Another systemic problem inherent in the judgement, but a lesser one to a degree, is that it is within the self-interest of the TC to cause an extension of the oversight time period. This might be changed if the judgement made explicit that at the end of the initial period, TC members must relinquish their posts, and a completely new set of members will be selected in the case of an extension.

Sincerely,

Yours,

- Roland Radtke